

Fig. 3 of Fell, Sr. discloses a prior art closet flange having an annular stop shoulder 12 to which is connected a plug 14 that can be broken away after water or air tests of the sewer system. In column 4, lines 19-21, Fell, Sr. notes that "the plug 14 will fall downwardly into the plumbing assembly leading to the soil pipe and vent assembly and is sometimes difficult to extract." Fell, Sr. solves the problem of plug 14 falling into the drain pipe by providing a threaded drain plug 43 (Fig. 5.). Piskula teaches a toilet flange in which the knock out 29 has a diameter *larger* than the diameter of a lumen 13a, thereby preventing the knock out 29 from falling into the drain pipe.

It would not have been obvious to enlarge the plug 14 of the prior art closet flange shown in Fig. 3 of Fell, Sr., because this would go against the teachings of Fell, Sr., which suggests the use of a threaded drain plug 43 having the same diameter as the through bore in the lower cylindrical portion 11b. Furthermore, even if Piskula would have suggested that the plug 14 in Fig. 3 of Fell, Sr. should be enlarged so that it would not fall down the drain pipe 1, the plug 14 would then be at the level of flange 13 just as the knock out 29 of Piskula is at the level of flange 14. Accordingly, the modified enlarged plug 14 of Fig. 3 of Fell, Sr. would have a diameter *larger* than the inner diameter of the through bore of the cylindrical body portion 11b. Thus, the examiner's proposed combination would not result in the closet flange of Applicant's pending independent Claims 1 and 11, which require that the knock out have a diameter that is *less* than that of the through bore of the cylindrical body portion. To the extent that the examiner contends that the plug 14 of Fig. 3 of Fell, Sr. could be recessed below the level of flange 13 to end up with a diameter less than the through bore of body portion 11b, he has used Applicant's specification as a teaching or suggestion, which is improper. The teaching or suggestion to make the claimed combination must be found in the prior art and must not be based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991). Accordingly, withdrawal of the obviousness rejection of Claims 1-4, 6-9, 11-12 and 14-18 for alleged obviousness over Fell, Sr., in view of Piskula, is requested.

Applicant now turns to the rejection of Claims 11-12 and 14-19 under 35 USC §112, first paragraph, as failing to comply with the written description requirement. To fulfill the written description requirement, the specification must allow one skilled in the art "to recognize that the inventor invented what is claimed." *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473 (Fed. Cir. 1998). See also *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991), (explaining that the Applicant must convey "with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention," namely, what is claimed) (emphasis omitted). It is well established under U.S. patent law that the patent drawings form part of the disclosure. Indeed, patent drawings, *even without supporting text in the specification*, can satisfy the written description requirement. See, e.g., *Cooper Cameron Corp. v. Kvaerner Oilfield Prods., Inc.*, 291 F.3d 1317, 1322-23 (Fed. Cir. 2002); *Vas-Cath*, 935 F.2d at 1564-65. See also *Space Systems/Loral, Inc. v. Lockheed Martin Corporation*, 74 USPQ 2d 1534 (Fed. Cir. 2005), in which the CAFC reversed an invalidity holding for violating the written description requirement of 35 USC §112, first paragraph, where the accused infringer's expert identified the second step of the claimed method in Fig. 2B of the patent drawings. There can be little doubt that Fig. 6 of the subject application allows one skilled in the art of plumbing part design to appreciate that annular lip 26 forms a downwardly facing surface that opposes a butt end of a standard smaller size drain pipe 14'.

Accordingly, withdrawal of the rejection of Claims 11-12 and 14-19 under 35 USC §112, first paragraph, is requested.

For the foregoing reasons, Claims 1-4, 6-9, 11-12 and 14-19 are allowable and notification to this effect is solicited. No additional fee is due at this time.

Respectfully submitted,



By: Michael H. Jester  
Attorney for Applicant  
Registration No. 28,022